

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

FILED

JAN 21 2015

UNITED STATES OF AMERICA)

v.)

RAINIER PENA-ROJAS)

MO-14-CR-250(1)

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY MS DEPUTY

**FINDINGS OF FACT AND RECOMMENDATION ON FELONY GUILTY
PLEA BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b), this matter has been referred by the District Court for administration of guilty plea and allocution under Rule 11 of the Federal Rules of Criminal Procedure.

On the 21st day of January, 2015, this cause came before the undersigned U.S. Magistrate Judge for Guilty Plea and Allocution of the Defendant **RAINIER PENA-ROJAS**^{1 2} on Counts **ONE** and **TWO** of the **INDICTMENT**³ filed herein charging him in Count **ONE** with a violation of 21 U.S.C. § 846 and Count **TWO** with a violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2. The Defendant signed a written consent to plead before the Magistrate Judge. After conducting said proceeding in the form and manner prescribed by FED.R.CRIM.P. 11 the Court finds:

a) that the Defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a U.S. Magistrate Judge subject to final approval and imposition of sentence by the District Court;

b) *that the Defendant pleaded guilty to COUNTS ONE and TWO of the INDICTMENT without a written plea agreement. Any oral agreements were stated into the record by the parties; and,*

c) that the Defendant is fully competent and capable of entering an informed plea,⁴ that the Defendant is aware of the nature of the charges and the consequences of the plea,⁵ and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

¹An Interpreter was present and interpreted the proceedings for the Defendant.

²The Defendant's true and correct name is **RAINIER PENA-ROJAS**. The Court granted the Government's Oral Motion to Amend the Indictment to correct the Defendant's name and entered a separate order.

³The Indictment was orally amended in court, without objection, deleting the word "actual," as granted in a separate order filed on January 15, 2015, (Doc. 60).

⁴The Defendant testified that he has discussed with his attorney the adverse immigration consequences of pleading guilty to a felony offense and he wished to continue with his plea.

⁵The Defendant was admonished as to the statutory penalty range for Counts **One** and **TWO** each of up to 20 years imprisonment, a mandatory minimum 3 years supervised release, a fine not to exceed One Million Dollars (\$1,000,000.00), and a One Hundred Dollar (\$100.00) mandatory special assessment. The Defendant was informed that the U. S. District Judge could order the punishments for Counts **ONE** and **TWO** to run consecutively.

IT IS THEREFORE the recommendation of the undersigned U.S. Magistrate Judge that the District Court accept the guilty plea of the Defendant **RAINIER PENA-ROJAS** and that **RAINIER PENA-ROJAS** be finally adjudged guilty of that offense.

The United States District Clerk shall serve a copy of this Proposed Findings of Fact and Recommendation on all parties electronically. In the event that a party has not been served by the Clerk with this Report and Recommendation electronically, pursuant to the CM/ECF procedures of this District, the Clerk is ORDERED to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to this report must serve and file written objections within fourteen (14) days after being served with a copy unless the time period is modified by the District Court. A party filing objections must specifically identify those findings, conclusions or recommendation to which objections are being made; the District Court need not consider frivolous, conclusive or general objections. Such party shall file the objections with the Clerk of the Court and serve the objections on the Magistrate Judge and on all other parties. A party's failure to file such objections to the proposed findings, conclusions and recommendation contained in this report shall bar the party from a de novo determination by the District Court. Additionally, any failure to file written objections to the proposed findings, conclusions and recommendation contained in this report within fourteen (14) days after being served with a copy shall bar the aggrieved party from appealing the factual findings of the Magistrate Judge that are accepted or adopted by the District Court, except upon grounds of plain error or manifest injustice.

SIGNED this 21nd day of January, 2015.

A handwritten signature in black ink, appearing to read 'D. Counts', written over a horizontal line.

DAVID COUNTS
United States Magistrate Judge